

## MINUTES OF THE REGULAR MEETING OF October 13, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 13, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. I.G. Burton, III, Mr. Martin Ross, and Mr. Doug Hudson with Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Director - Appointee, and Mr. Daniel Brandewie – Planner II.

Motion by Mr. Ross, seconded by Mr. Hudson, and carried unanimously to approve the Agenda as amended (typo). Motion carried 4 – 0.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Minutes of September 8, 2016 and September 22, 2016 as amended. Motion carried 4 – 0.

### OLD BUSINESS

#### **2016-8 – Burton Acres II – MDI Investments Group, LLC**

This is a Major Subdivision for the creation of a standard subdivision. The plan proposes to subdivide 23.91 acres + / - into 19 single family lots with private roads and open space. The property is located north of Iron Branch Road on both sides of Mountain Laurel Drive. Tax Map I.D. 233-5.00-24.00 & 24.13. Zoning: MR (Medium Density Residential District).

Announcement of Receipt of Soil Feasibility Study.

Ms. Cornwell advised the Commission that staff received the soil feasibility study from DNREC and that the letter states the lots are approved for septic systems.

Mr. Hudson stated that he would move that the Commission grant preliminary approval of Subdivision No. 2016-08 for MDI Investments Group, LLC, based upon the record and for the following reasons:

- 1) This is the expansion of the existing Burton Acres Subdivision, and 51% of the existing property owners within Burton Acres have approved this expansion.
- 2) The application meets the purpose of the Subdivision Code in that it protects the orderly growth of Sussex County. It also meets the requirement of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
- 3) The proposed subdivision density is less than the density permitted in the existing MR (Medium Density Residential District) zoning.
- 4) The proposed expansion of the Burton Acres Subdivision will not adversely affect nearby uses or property values.
- 5) The subdivision is consistent with what currently exists within Burton Acres and with other developments in the area.

- 6) The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- 7) DNREC has indicated that the site is suitable for individual on-site septic systems.
- 8) This approval is subject to the following conditions:
  - A. There shall be no more than 19 additional lots within the Burton Acres Subdivision, for a total of 47 lots.
  - B. These additional lots shall be governed by a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
  - D. All entrances shall comply with all of DelDOT's requirements, and the current entrance to Mount Laurel Road shall be paved by the Developer.
  - E. The street design and construction shall be in accordance with or exceed Sussex County's street and roadway requirements.
  - F. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
  - G. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - H. As stated by the applicant, there shall be a 50 foot buffer from all Wetland areas.
  - I. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
  - J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hudson, seconded by Mr. Ross, and carried unanimously to grant preliminary approval of Subdivision NO. 2016-08 for MDI Investments Group, LLC based upon the reasons and with the conditions stated. Motion carried 4 – 0.

### **2016-1 – The Estates at Middle Creek Subdivision – BDRP, LLC**

This is a Major Subdivision plan to subdivide 146.96 acres + / - into 314 single family lots with private roads and open space. The property is located on the north side of Angola Road approximately 2,210 feet east of John J. Williams Highway (Route 24). The property is zoned AR-1 (Agricultural Residential District). Tax Map I.D. 234-11.00- 51.00, 54.00, 54.01, 54.02, 54.03 and 234-12.00-14.00.

Announcement of Receipt of letter from DelDOT regarding TIS.

Ms. Cornwell advised the Commission that staff is in receipt of a letter from DelDOT regarding the TIS and that DelDOT expects to have the final review by the end of October.

There was no action taken by the Commission on this application.

**C/U #2058 – Old Orchard Ventures, LLC, c/o Barry Baker**

**An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family (duplex) dwelling structures (24 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less.** The property is located at the northeast of Old Orchard Road (Road 269A) approximately 1,115 feet southeast of New Road (Road 266). 911 Address: 16773 Old Orchard Road, Lewes. Tax Map I.D. 335-8.00-25.00.

The Commission discussed this application which has been deferred since September 22, 2016.

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use No. 2058 for Old Orchard Ventures, LLC c/o Barry Baker for 24 multi-family duplex-style units based upon the record made at the public hearing and for the following reasons:

- 1) This is an application for a Conditional Use that was recommended for approval by the Planning and Zoning Commission on March 25, 2010 and approved by the County Council on July 20, 2010. That prior approval expired.
- 2) The property is in an area where other residential development has occurred, including townhouse, multi-family and single-family developments. The project is consistent with those developments, and will provide a transition between adjacent single family uses on one side and commercial zoning on the other side of the project.
- 3) The project is in a Development District according to the Sussex County Comprehensive Land Use Plan.
- 4) The applicant has proposed only 24 duplexes, which is significantly less than the density that could occur under the existing MR (Medium Density Residential District) zoning of the property.
- 5) The development of this site with 24 duplexes will not have a significant adverse impact upon area traffic.
- 6) The project site was known as the Donovan Site which has been admitted into the DNREC Brownfield Program based on the existence of solid waste materials previously buried on the site. According to the Applicant, DNREC has stated that the site is also suited for development. Cleaning up the site through redevelopment under a DNREC Management Plan will benefit the environment and the health and safety of the inhabitants of the project and the surrounding area.
- 7) With the stipulations placed upon this approval and based upon Brownfield remediation program, there will be no adverse impact on neighboring or adjacent properties.
- 8) This recommendation of approval is subject to the following conditions:
  - A. There shall be no more than 24 residential dwelling units.
  - B. The removal, disposal and monitoring of waste from the project site shall be in compliance with all DNREC requirements.
  - C. The applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.

- D. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- E. The project shall be served by central sewer by the City of Lewes and/or Sussex County. Sewer service shall be available at the site prior to the issuance of the first residential building permit.
- F. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these features.
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along at least one side of all streets.
- I. There shall be a vegetated buffer along the entire perimeter of the site pursuant to Sections 115-218E and 99-4 of the Sussex County Code. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design for the site, including the buffer areas.
- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.
- K. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Departments.
- L. The applicant shall cooperate with the local school district's transportation manager to establish a school bus stop area. The bus stop area shall be shown on the Final Site Plan.
- M. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- N. The Final Site Plan shall depict an easement for access to the property at the rear of the site.
- O. All Site Plans and condominium documents shall contain a notice that the site is a Brownfield Site. The Final Site Plan shall identify the methods of monitoring the site before, during and after cleanup.
- P. The Final Site Plan and condominium documents shall contain a notice similar to the agricultural use protection notice that the site is in the vicinity of a concrete plant, and the dust, noise, traffic, etc. associated with that plant.
- Q. No Certificate of Occupancy shall be issued for any dwelling unit within the project until a Certificate of Completion of Remedy or similar certification is issued by DNREC confirming that all Brownfield remediation on the entire site has been completed to the agency's satisfaction. This requirement shall be included as a Note on the Final Site Plan for the development.
- R. The Final Site Plan for the development shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to forward Conditional Use No. 2058 for Old Orchard Ventures, LLC c/o Barry Baker to the Sussex County Council with the recommendation that this application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

**C/U #2059 – Julie Norwood**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a beauty salon to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,205 square feet, more or less.** The property is located at the northwest corner of John J. Williams Highway (Route 24) and Retz Lane (a private road). 911 Address: None Available. Tax Map I.D. 334-12.00-25.00.

The Commission discussed this application which has been deferred since September 22, 2016.

Ms. Cornwell advised the Commission that staff is in receipt of a Preliminary Site Plan for the window cleaning business for the original conditional use and plan to have that on October 27, 2016 Agenda or the November 3, 2016 Agenda. The Applicant still needs agency approvals and to make amendments to the site plan for the original conditional use approved for Robert Norwood.

The Commissioners expressed some concern that the original conditional use approved for Robert Norwood on this parcel had not, until recently, been submitted for site plan approval; that the entrance and parking area from Route 24 was constructed without approvals; and that since the original application did have a condition of approval limiting access from Retz Lane the same condition could be placed on this application.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

## PUBLIC HEARINGS

**2016-10 – Hamlet of Tillery – Dale Wheatley**

This is a Major Subdivision for the creation of a cluster subdivision. The plan proposes to subdivide 27.61 acres + / - into 27 single family lots with a private road and open space. The property is located west side of Long Branch Road approximately 822 feet northwest of Sharps Mill Road. Tax Map I.D. 430 – 11.00 – 30.00, & 107.00 – 139.00. Zoning: AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that this was a major subdivision; that the application was sent to the Technical Advisory Committee (TAC) and staff received comments from multiple agencies; and that the applicant submitted an exhibit book and preliminary subdivision plan.

The Planning Commission recognized Mr. Mark Davidson, of Pennoni Associates, Inc. and Dale Wheatley were present on behalf of the applicant; that the applicant was granted Final Subdivision approval in 2009 for application 2005-86 for thirty-three (33) lots; that the applicant

constructed the entrance and cleared trees for the road not realizing a time extension approval was required; that the entrance and tree removal for the road did not meet the requirements for the project to be substantially underway; that this application is for a twenty-seven (27) lot subdivision; that the applicant has all agency approvals except for Sussex County Engineering Department; that the proposed subdivision has a .98 density; that the property is 100% wooded other than the road; that the cluster subdivision will have an average lot size of 25,000 SF; that there is no direct access from the lots to the main road; that a thirty (30) foot wide wooded buffer will surround the proposed subdivision; that the proposed housing will be single-family dwellings; that covenants and restrictions have been submitted with the application; that there are no wetlands on the site; that they submitted seventeen (17) items under Section 99-7C; that they are keeping and preserving as much of the wooded area as possible; that since there are seven (7) less lots they are seeking to decrease the stormwater management ponds; that by removing two (2) of the stormwater management ponds will allow the area to remained wooded and undisturbed; that the site is not within the 500 year floodplain; that the lots will have individual wells and septic systems and will required DNREC approval; that they do have approval for the feasibility study; that under the source water protection they are providing an excellent recharge area in the front of the property; that that the minimum source water protection code is 35% and their site is at 11.3% impervious area; that sidewalks will be provided along one side of the road; that there will be no negative impact to the neighboring property values; that there will be no negative impact to the local schools and to traffic; that the open spaces will remain wooded; and that they will provide an Agriculture statement on the Final Site Plan in reference to the existing poultry houses.

Joseph Gardy lives adjacent to the site; that the original plan had a playground behind his property; that he feels the playground is too close to his property; that the entrance to the proposed subdivision is on a curve in the road; that he feels this may cause a safety issues; that the proposed twenty-seven (27) wells may affect his existing well; and that will the proposed retention ponds contain water on the site.

Mr. Davidson stated that there is a potential to relocate the playground once they receive approval to remove a stormwater management pond; that DNREC new well regulations will be required to have their own confined aquifer; and that a licensed well driller will have to drill new wells in accordance with the new regulations.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

### **2016 – 13 – Barry N. Koch and Diane J. Koch**

This is a Major Subdivision for the creation of a standard subdivision. The plan proposes to subdivide 31.743 acres + / - into 1 single family lot with a residual off an easement. The property is located on the south and east side of Loy Lane and west of Green Road. Tax Map I.D. 234-18.00- 56.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Wheatley and Mr. Robertson recused themselves from the public hearing and left the Council Chambers.

Ms. Cornwell advised the Commission that staff received comments from the Sussex County Engineering Department and proposed deed restrictions that the Commission may want legal counsel to review.

Mr. Brandewie advised the Commission that the applicant is requesting a waiver from the buffer requirement and street standard requirement for a subdivision.

The Planning Commission recognized Mr. Charles Adams, of Adams Kemp Associates, was present on behalf of the applicant; that this is a one (1) lot subdivision off of an existing fifty (50) right of way; that the existing lots were created years ago; that the applicant wants to subdivide a one (1) acre lot; that the road would be used as it exists now; that there will be deed restrictions that include the shared road maintenance agreement; that Koy Ln. is recognized by the Addressing Department; and that the road is now paved.

Tome Keiser stated that he lives on Koy Ln. and is neither in favor of opposition of the application; that the road name was created by the current property owners; that he has lived on the property for twenty-two (22) years; that over the years the road has been improved and paid for by the current owners; that he is concerned for large trucks using the lane during construction, if a dwelling is built on the new lot; that there are alternative lanes that could be used to access the proposed lot; and that the applicants are not part of the easement agreement.

William Yokum stated that he lives on Koy Ln. and that Koy Ln. in 1978 was originally part of their property; that the deed references a fifty (50) foot wide road; that the applicant has created another road on their property that the survey doesn't show; and that the road the applicants created should be used for the proposed lot.

Laverne Augenfus stated that she has no issue with the subdivision of the lot; that she does not feel the lot should be accessed from Koy Ln.; that she would not want to see the other thirty-one (31) acres subdivided and have access to Koy Ln.; and that the current property owners have been maintaining and paying for improvements on Koy Ln. since 1978.

Ms. Cornwell stated that the proposed deed restrictions state that the owner of the proposed lot will be responsible to any maintenance and repairs needed to Koy Ln. during construction of the lot; and that an escrow account will be started to provide funding needed to maintain and repair Koy Ln.

Mr. Brandewie stated that he would recommend approval of the buffer requirement since the proposed lot is surrounded by existing woods.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried unanimously to defer action in order to receive legal counsel. Motion carried 3 – 0.

## OTHER BUSINESS

### **Sawmill Woods (fka Estates at Enchanted Woods) 2016-5** Final Subdivision

Ms. Cornwell advised the Commission that this is a final subdivision plan. The major subdivision is to allow for the creation of 14 parcels with site improvements to be located off of Huff Rd. the property is zoned AR-1. The tax parcels are 235-24.00-234.00 through 249.00 & 235-24.00-39.01. The Planning Commission approved the Preliminary Subdivision Plan at their meeting on May 12, 2016. As part of the preliminary subdivision approval the Planning Commission approved the waiver for the 20 ft. forested landscape buffer. The previous subdivision also Sawmill Woods (2004-51) expired on January 1, 2016. The plan complies with the conditions of approval and staff is in receipt of all agency approvals.

Motion by Mr. Hudson, seconded by Ross, and carried unanimously to approve the Final Subdivision Plan. Motion carried 4 – 0.

### **Lands of Vonasek on Reynolds Road** Preliminary Site Plan

Ms. Cornwell advised the Commission that this is preliminary site plan for the construction of a 7,200 SF building with site improvements for a riding academy. The use as a riding academy requires a Special Use Exception by the Board of Adjustment. The Board of Adjustment granted approval of the Special Use Exception for a riding academy on July 18, 2016. The property is zoned AR-1. The tax parcel is 235-6.00-16.00. Staff is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan subject to the staff upon receipt of all agency approvals. Motion carried 4 – 0.

### **Assembly of the Sacred Wheel** Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a preliminary site plan for the construction of a 2,700 SF building for a 40 seat religious service facility located on a 91.167 ac. +/- parcel of land. The building was constructed without Site Plan approval. The plan complies with the parking calculation. The property is accessed from a shared private drive off Deer Forest Road. The property is zoned AR-1 and the Tax Parcel is 231-3.00-6.00. Churches are a permitted use in this zoning district. Staff is awaiting agency approvals.

There was discussion regarding this application.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan subject to the staff upon receipt of all agency approvals. Motion carried 4 – 0.



### **The Cross Christian Academy (CU 2010)**

#### **Preliminary Site Plan**

Mr. Brandewie advised the Commission that this is a preliminary site plan for the construction of a 9,798 SF private school for the Cross Christian Academy School to serve grades K-12. The Planning Commission held a public hearing on February 26, 2015. This Conditional Use (CU 2010) was approved by County Council on April 14, 2015. Site improvements will include a new school building, athletic center and a small maintenance building. The property will also contain a 74 space parking lot with an entrance off of Spruce Road. The property is identified as tax parcel 230-26.00- 6.03 and is zoned AR-1. Staff is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan subject to the staff upon receipt of all agency approvals. Motion carried 4 – 0.

### **Living Hope Fellowship Church**

#### **Preliminary Site Plan**

Mr. Brandewie advised the Commission that this is a preliminary site plan for the construction of an 8,000 SF one story church building and a 64 space parking lot using pervious paving material. An addition may be built at a later date. The property is located on the west side of Staytonville Rd. The Tax Parcel is 430-1.00-13.06. The property is zoned AR-1. Churches are a permitted use in this zoning district. Staff is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan subject to the staff upon receipt of all agency approvals. Motion carried 4 – 0.

### **Lands of Watson on Bucks Road**

#### **Minor Subdivision with 50 ft. easement**

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one parcel of land and the creation of a 50 ft. easement. The proposed lot will be 1.290 ac. +/- and the residual will be 12.449 ac. +/- . The new 50 ft. easement will go over the existing driveway. The property is zoned AR-1 and the tax parcel is 330-11.00-64.04. Staff is awaiting approval from DelDOT.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried unanimously to approve the Minor Subdivision with 50 ft. easement subject to approval from DelDOT. Motion carried 4 – 0.

### **Lands of Short on Woodenhawk Road**

#### **Minor Subdivision with 50 ft. easement**

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one parcel of land and the creation of a 50 ft. easement. The new lot will be 1 ac. +/- and the residual will be 1.5 ac. +/- . The new easement will go over the existing driveway. The property is zoned AR-1 and the tax parcel is 530-11.00-24.00. Staff is awaiting approval from DelDOT.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Minor Subdivision with 50 ft. easement subject to approval from DelDOT. Motion carried 4 – 0.

### **The Reserves**

#### **Request to Amend Setbacks**

Ms. Cornwell advised the Commission that this is a request to revise the front yard setback for the subdivision from 30 ft. to 25 ft. The property is a RPC and the Planning Commission has the ability to reduce the setbacks within the development. The owner is requesting the reduction due to an issue with Benentts Tax Ditch. The tax ditch has widened over the years and has begun to encroach into the building restriction lines of some of the parcels; therefore, the application is requesting the reduction in the front yard setback. The Planning Commission deferred a decision at their September 22, 2016 meeting to allow for Mr. Hudson and staff to perform a site visit with the applicant. The site visit occurred on Oct. 6, 2016.

Mr. Lardner, of Davis, Bowen, & Friedel, stated that the Applicant is requesting to shift the buildable area five (5) foot forward due to the widening of the tax ditch over the years and not intended to build larger homes.

Motion by Mr. Hudson, seconded by Mr. Burton, and carried unanimously to approve the request to amend setbacks as follows:

1. For all lots have either a certificate of occupancy or a building permit (Lots 10, 12, 15, 16, 17, 18, 19, 20, 22, 25, 31, 96, 97, 98, 101, 105, 109, 110, 173, 174, 175, and 179), the front yard shall be reduced from 30' to 25'.
2. For all remaining lots, the front yard shall be reduced from 30' to 25' and the rear yard shall be increased from 10' to 15' (144 total lots).
3. With regard to the site plan the developer shall adjust lot lines for Lots 113, 114, 126, 127, and 128.
4. And shall remove Lot 129.

Motion carried 4 – 0.

### **ADDITIONAL BUSINESS**

#### **Discussion regarding the Comprehensive Plan**

Ms. Cornwell stated that the Comprehensive Plan public meetings were held September 26, 2016 through October 5, 2016 in five (5) locations around the County; that attendance for each location was as follows; 86 in Lewes, 34 in Millsboro, 14 in Seaford, 34 in Georgetown, and 24

in Millville; that there were a total of 856 Post-It notes with comments from the public; that staff has received a an excel spreadsheet with the breakdown of the Post-It comments; that they are listed under topic and location; summary of the Conservation Focus Group will be sent to members; and that the survey is still available unit October 21, 2016.

Discussion about the Comprehensive Plan moving forward.

The Planning Commission and the County Council members will hold a workshop on November 15, 2016 to discuss the Comprehensive Plan.

**Opportunity for public comment regarding the Comprehensive Plan**

Meeting adjourned at 7:57 p.m.